

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2320 of 1999

with
special civil applications nos. 2326,2329,2330
2332, 2335, 2336,2338,2340,2341.2342
and 2357 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

P M S DIESELS

Versus

UNION OF INDIA

Appearance:

MR AMAR DAVE for Petitioners

MR PB MAJMUDAR for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 05/04/99

ORAL JUDGEMENT

Rule. Mr.Majmudar, learned counsel appears and waives service of rule on behalf of the respondents. With the

consent of parties, matters are taken up for final hearing today.

In this group of petitions, similar orders passed on 21.12.1998 by the Commissioner (A) , Central Excise and Customs, Ahmedabad have been challenged. One of such orders reads as under :

"I have carefully considered the stay application and the submissions made by the appellants on merits. As per the judgment of the Honourable Gujarat High court in the case of DCW Ltd and others, personal hearing is not must for deciding stay application. I am taking up stay application for decision. From the prima facie examination of the case, there does not appear to be any ground for exercising full waiver of duty/penalty and therefore, the appellants are directed to deposit Rs. 48,000/- as a pre-deposit u/s 35F of the Central Excise Act, 1944, by 07.01.1999 and furnish the proof of deposit by 14.01.1999. Subject to deposit of this amount, the balance amount of duty confirmed/ penalty imposed shall be waived till final disposal of the appeal. However, if the appellants fail to comply with these directions, their main petition shall be liable to be dismissed for non compliance of section 35F ibid".

The learned counsel for the petitioners contended that it cannot be said that reasons have been recorded and after application of mind, orders have been passed as to why appellate authority did not consider it proper to grant the request and prayer for stay. In this connection, our attention was invited by the learned counsel for the petitioners to the order passed in Special Civil Application No. 448/99 and companion matters decided on February 1,1999. After considering the rival contentions of the parties as also to other points, the Division Bench to which one of us (A.L.Dave,J.) was a party, allowed all the petitions by directing the appellate authority to rehear the applications for stay moved by the petitioners and pass appropriate speaking orders within the stipulated period.

We are in concurrence with the orders passed by the Division Bench . In the facts of the case, without entering into the larger question and without considering the merits of the matter, we allow the petitions by setting aside the orders passed by the

appellate authority and by directing him to rehear the applications for stay moved by the petitioners and pass appropriate orders within a period of four weeks from the date of receipt of writ of this order. No further action will be taken in pursuance of the aforesaid order .

-parekh